Supreme Court, U. S.
FILED
JUL 25 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1179

UNITED STATES OF AMERICA,

Petitioner

—v.—

MITCHELL MILLER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MARCH 17, 1975
CERTIORARI GRANTED JUNE 9, 1975

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1179

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

MITCHELL MILLER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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RELEVANT DOCKET ENTRIES

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT
9035

DATE	PROCEEDINGS
1973	
3-15	Filed Indictment and Vote of the Grand Jury.
3-15	J. S. 2 Report prepared.
3-16	Warrant for Arrest of Defendant JOHN HENRY McDUFFIE issued.
3-19	Filed Appearance Bond for JOHN HENRY McDUFFIE.
3-15	Filed Appearance Bond for MITCHELL MILLER in amount of $5,000.00.
3-15	Filed Appearance Bond for JOSEPH KENNETH BROOKS in the amount of $5,000.00.
3-15	Filed Appearance Bond for TERRY LEE SMITH in the amount of $5,000.00.
3-15	Filed Appearance Bond for SUSAN McDUFFIE WEEKS in the amount of $5,000.00.
3-21	Plea of Not Guilty entered by MILLER, SMITH, WEEKS & McDUFFIE.
3-21	Filed Motion for Discovery and Inspection by MILLER.
3-21	Filed Motion to Compel Disclosure of Exculpatory Material and Information by MILLER.
3-28	Filed Motion for Additional Peremptory Challenges by SMITH.
3-28	Filed Motion to Suppress Evidence by SMITH.
3-28	Filed Motion for Discovery and Inspection by SMITH.

DATE	PROCEEDINGS

3-28 Filed Motion for Disclosure by SMITH.

3-28 Filed Motion to Suppress Evidence and Statements by MILLER.

3-28 Filed Motion for Additional Peremptory Challenges as to MILLER.

3-28 Filed Motion for Severance and Separate Trial as to MILLER.

3-28 Filed Motion for Bill of Particulars as to MILLER.

3-28 Filed Motion to Suppress Evidence as to MILLER re seizure of distillery.

3-28 Filed Motion to Suppress Evidence as to MILLER re seizure of van truck.

4-3 Filed Motion for Discovery as to Weeks.

4-3 Filed Motion for Severance as to Weeks.

4-4 Filed Motion to Suppress as to Weeks.

4-4 Filed Motion for Discovery as to McDuffie.

*4-4 Filed Motion to Suppress as to McDuffie.

4-18 Filed Stipulation of Fact and Testimony between the United States and Defendant Mitchell Miller as to the testimony of Mr. Barry Jones, President, C&S Bank of Warner Robins, Georgia, if he were called to testify in behalf of Mitchell Miller on his Motion to Suppress Documentary Evidence secured from the bank by ATF Agents.

4-18 Filed Stipulation of Fact and Testimony between the United States and Defendant Mitchell Miller as to the Testimony of Mr. Harold Peavy, President, Bank of Byron, Byron, Georgia, if he were called to testify in behalf of Mitchell Miller on his Motion to Suppress Certain Documentary Evidence secured from the bank by ATF Agents.

DATE	PROCEEDINGS

4-19 Filed Order of Judge Wilbur D. Owens, Jr., Granting Defendants' Motion to Suppress.

4-18 Filed Motion for Continuance of Trial as to MITCHELL MILLER.

4-20 Filed Motion to Dismiss Indictment as to SUSAN McDUFFIE WEEKS.

4-20 Filed Motion to Strike as to TERRY LEE SMITH.

4-20 Filed Motion for Evidentiary Hearing as to MITCHELL MILLER.

4-20 Filed Motion to Strike as to MITCHELL MILLER.

4-20 Filed Motion for Continuance as to KEN BROOKS.

4-20 Filed Motion for the Court to consider all motions filed on behalf of the co-defendants in this indictment as adopted by KEN BROOKS and that the Court rule on said motions as they might apply to this defendant.

4-20 Filed Motion for Evidentiary Hearing as to TERRY LEE SMITH.

4-20 Plea of Not Guilty entered by JOSEPH KENNETH BROOKS.

4-23 Filed Motion to Strike Matter as Surplusage by Defendant Susan McDuffie Weeks.

4-23 Filed Order for Dismissal of Indictment as to TERRY LEE SMITH.

4-23 J. S. 3 Report prepared as to TERRY LEE SMITH.

4-23 Filed Order of Judge Wilbur D. Owens, Jr., that TERRY LEE SMITH give testimony or provide other information which he refuses to give or to provide on the basis of his privilege against self-incrimination as to all matters about which he may be interrogated, this order to become effective only if after the date of this order said TERRY LEE SMITH refuses to testify.

DATE	PROCEEDINGS

4-23 Filed MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANTS' MOTIONS TO SUPPRESS.

4-23 Filed motion of the United States Attorney for the Court to issue an order pursuant to the provisions of Title 18, U.S. Code, Section 6001, et seq., compelling TERRY LEE SMITH to give testimony which he refuses to give on the basis of his privilege against self-incrimination, with the approval of the Assistant Attorney General of the United States, Criminal Division, Department of Justice.

4-23 Filed Request for Voir Dire by Defendant MITCHELL MILLER.

4-23 Filed Order of Judge Wilbur D. Owens, Jr., denying the Motion to Dismiss Indictment of SUSAN McDUFFIE WEEKS.

4-24 Filed original page 4 of the Indictment which was removed from the Indictment and replaced with a new page 4 in open court at the direction of Judge Wilbur D. Owens, Jr.

4-24 Filed Order to Show Cause in Re Contempt, John A. Carroll to show cause before this Court within twenty-four (24) hours of service of this order in U.S. District Court, Macon, Georgia, why he should not be held in contempt of Court, Judge Wilbur D. Owens, Jr.

4-30 Filed Defendant Miller's Request to Charge.

4-30 Filed Defendant Weeks' Request to Charge.

5-1 Filed question from jury to the Court. (at direction of the Court.)

5-1 Trial by Jury, Judge Wilbur D. Owens, Jr., presiding.

DATE	PROCEEDINGS

5-1 Filed Order of Judge Wilbur D. Owens, Jr., declaring mistrial, the jury being unable to arrive at a verdict as to all defendants.

5-3 Filed Motion for Continuance of Trial as to MITCHELL MILLER.

5-14 Second Trial by Jury, Judge Wilbur D. Owens, Jr., presiding.

5-14 Verdict: MITCHELL MILLER—Guilty on all counts.
SUSAN McDUFFIE WEEKS—Guilty on Count 1.
JOHN HENRY McDUFFIE—Guilty on all counts.

6-6 Sentence: MITCHELL MILLER—Cts. 1, 2, 3, 4, 5, 36 months imprisonment on each count concurrent.
SUSAN McDUFFIE WEEKS—Ct. 1, 5 years probation with supervision.
JOHN HENRY McDUFFIE—Cts. 1, 2, 3, 4, 5, 36 months imprisonment each count concurrent.

Judge Wilbur D. Owens, Jr.

(Criminal Order File, Vol. 7, p. 1116, 1117, 1118)

6-6 J. S. 3 Report prepared for MITCHELL MILLER, SUSAN McDUFFIE WEEKS and JOHN HENRY McDUFFIE.

6-6 Filed Notice of Appeal for MITCHELL MILLER.

6-6 Filed Notice of Appeal for SUSAN McDUFFIE WEEKS.

6-6 Filed Notice of Appeal for JOHN HENRY McDUFFIE.

DATE	PROCEEDINGS

6-6 Filed Order of Judge Wilbur D. Owens, Jr., allowing appeal bond for MITCHELL MILLER and JOHN HENRY McDUFFIE in the amount of $10,000.00 each.

6-6 Filed Appeal Bond for MITCHELL MILLER in the amount of $10,000.00.

6-6 Filed Appeal Bond for JOHN HENRY McDUFFIE in the amount of $10,000.00.

5-7 Filed REQUEST FOR VOIR DIER BY MILLER.

6-7 Plea of Not Guilty entered by JOSEPH KENNETH BROOKS entered on April 20, 1973, is withdrawn and a plea of Guilty to Count 5 entered.

6-7 Sentence: JOSEPH KENNETH BROOKS—Ct. 5, I.S.S., 5 years probation with supervision.

6-7 Filed Order for Dismissal of Counts 1, 2, 3 and 4 as to JOSEPH KENNETH BROOKS.

6-7 J. S. 3 Report prepared, as to JOSEPH KENNETH BROOKS.

*4-17 Filed Electronic Recording of Plea; Defts. 1, 3, 4, 5; Record #209.

7-11 Filed Order of Judge Wilbur D. Owens, Jr., ordering that the time for preparation and filing of the record and transcript on appeal is extended so as to expire on the ninetieth day following the filing of the notices of appeal.

6-14 Filed Electronic Recording of Plea; Deft. 2, Record #210.

8-23 Filed MOTION FOR REDUCTION AND MODIFICATION OF SENTENCE BY DEFENDANT MITCHELL MILLER.

8-24 Filed Order of Judge Wilbur D. Owens, Jr., denying Mitchell Miller's motion for reduction and modification of sentence.

DATE	PROCEEDINGS

9-6 Filed Transcript of Trial and Motions in 3 volumes from April 18, 1973, through May 14, 1973.

9-6 Filed certified copy of order from CCA-5 extending the time for filing the court reporter's transcript of trial proceedings to and including September 19, 1973.

9-13 Filed Electronic Recording of Sentence; Defts. 1, 4, 5; Record #213.

9-13 Filed Electronic Recording of Plea and Sentence; Deft. 2; Record #213.

9-14 Record on appeal forwarded to CCA5.

10-11 Filed Defendant Mitchell Miller's Motion to Supplement the Record.

10-11 Filed Order of Judge Wilbur D. Owens, Jr., for the Clerk to certify the petit jury list dated May 7, 1973, from which the jury was chosen to try this case, and forward it to the Clerk of CCA-5 as part of the record on appeal in this case.

10-19 Filed Designation of Supplemental Record by defendant Mitchell Miller.

10-19 Supplemental record on appeal mailed to CCA5.

1974

10-17 Filed Mandate from CCA-5 affirming in part and reversing in part the judgment of the District Court, as to Susan McDuffie Weeks and John Henry McDuffie only.

10-17 Filed Order of Judge Wilbur D. Owens thereon making the judgment of CCA-5 the judgment of this Court.

DATE	PROCEEDINGS

10-18 Filed Mandate (certified amended judgment) of CCA-5 affirming in part and reversing in part, remanding to District Court for further proceedings, as to Susan McDuffie Weeks only, with order thereon of Judge Wilbur D. Owens, Jr., making the Mandate the order and judgment of the District Court.

10-18 Filed Order of Judge Wilbur D. Owens, Jr., vacating his order of October 17, 1974, on Mandate issued October 15, 1974.

11-15 Filed Transcript of Testimony of Defendant, Mitchell Miller, April 23-27, 1973.

IN THE
DISTRICT COURT FOR THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Criminal No. 9035

Violation: 18 USC § 371, in
connection with Internal
Revenue Liquor Laws

UNITED STATES OF AMERICA

vs.

MITCHELL MILLER
JOSEPH KENNETH BROOKS
TERRY LEE SMITH
SUSAN McDUFFIE WEEKS
JOHN HENRY McDUFFIE

THE GRAND JURY CHARGES:

COUNT ONE

That beginning on or about October 5, 1972, to and including on or about January 9, 1973, in the Middle District of Georgia and within the jurisdiction of this court and at other places to the Grand Jurors unknown, MITCHELL MILLER, JOSEPH KENNETH BROOKS, TERRY LEE SMITH, SUSAN McDUFFIE WEEKS and JOHN HENRY McDUFFIE, who are designated herein as defendants, did unlawfully, wilfully, knowingly, feloniously and fraudulently combine, conspire, confederate and agree and have a tacit understanding with each other and with various other persons to the Grand Jurors unknown, in violation of Section 371 of Title 18, United States Code, to defraud the United States by manufacturing, distilling, possessing, transporting, removing, depositing and concealing distilled spirits on which a tax had not been paid with the in-

tent to defraud the United States of said tax, and to commit certain offenses against the laws of the United States pertaining to the illicit, unlawful and fraudulent manufacture, possession, transportation and distribution of distilled spirits, to wit:

(a) To unlawfully, wilfully and knowingly have in their possession and custody and under their control certain stills and distilling apparatus used and intended to be used for the distillation of distilled spirits set up without having the same registered as required by law, in violation of Section 5601(a)(1), Title 26, United States Code.

(b) To unlawfully, wilfully and knowingly remove, deposit and conceal a certain commodity for and in respect whereof a tax was imposed by the laws of the United States of America and which tax had not been paid, to wit: certain quantities of distilled spirits, the exact quantities being to the Grand Jurors unknown, with the intention to evade collection by the United States of America of the tax imposed on such spirits, in violation of Section 7206(4), Title 26, United States Code.

(c) To unlawfully, wilfully and knowingly engage in and carry on the business of distillers of spiritous liquors without having given bond as required by law, in violation of Section 5601(a)(4), Title 26, United States Code.

That is to say, it was the plan and purpose of said conspiracy that the said defendants and co-conspirators would and did violate the aforesaid statutes in the Middle District of Georgia on or about the dates as follows:

(a) That they did unlawfully, knowingly and wilfully have in their possession and custody and under their control unregistered stills and distilling apparatus in Houston County, in the Middle District of Georgia, on or about January 9, 1973, and prior thereto.

(b) That they did at the unregistered distillery described in the preceding paragraph of this indictment unlawfully, wilfully and knowingly engage in and carry on the business of distillers without having given bond as required by law.

(c) That they did unlawfully, knowingly and wilfully possess, remove and conceal nontaxpaid distilled spirits produced at the unregistered distillery referred to in the immediately preceding two paragraphs of this indictment in Houston County, in the Middle District of Georgia, on or about January 9, 1973, 175 gallons, more or less, and at other times and places and amounts unknown to the Grand Jurors.

And the Grand Jury further charges that having so conspired, combined, confederated and agreed, said defendants and co-conspirators, in furtherance of said conspiracy and to effect the objects and purposes thereof, did commit numerous overt acts, among which are the following, on or about the dates alleged, to wit:

1. From on or about October 5, 1972, to on or about October 23, 1972, MITCHELL MILLER called Walter Puhan in Ballwin, Missouri, and arranged for the rental of a warehouse at Kathleen, Georgia, for an agreed rental of $300.00 per month with a three months lease. Said lease was allegedly for an electronics company called Trans Aero Corporation.

2. On October 24, 1972, SUSAN McDUFFIE WEEKS rented a post office box at the Kathleen, Georgia, Post Office in the name of Trans Aero Corporation.

3. On October 24, 1972, SUSAN McDUFFIE WEEKS made arrangements with Flint Electric Company in Warner Robins, Georgia, to have the electricity turned on at the Kathleen, Georgia, warehouse in the name of Trans Aero Corporation.

4. On October 24, 1972, MITCHELL MILLER and another white male subject visited the warehouse property in Kathleen, Georgia, in a white panel truck, at which time MITCHELL MILLER stated to the former caretaker of the warehouse, "We've got new locks and new chains, and we're going to a put a sentry dog inside."

5. From on or about October 25, 1972, to on or about November 22, 1972, MITCHELL MILLER rented a green and white 1970 Chevrolet one and one-half ton van-type truck belonging to E-Z Haul National Car Rental

from K.B. Service Station, 4509 Houston Avenue, Macon, Georgia.

6. On October 26, 1972, MITCHELL MILLER purchased 16 sheets of 18 gauge 3-feet by 10-feet sheet metal from Taylor Iron Works, Macon, Georgia.

7. On November 1, 1972, MITCHELL MILLER purchased antennas and connections for two mobile radio units and two base station radios from Specialty Distributing Company, 539 Arch Street, Macon, Georgia. Said items were received and signed for by SUSAN McDUFFIE WEEKS.

8. On November 11, 1972, MITCHELL MILLER purchased a quantity of sheet metal approximately 5-feet by 13-feet and metal pipe from Macon Iron and Paper Stock Company, Lower Poplar Street, Macon, Georgia. MITCHELL MILLER loaded these items onto a van-type rental truck.

9. On November 22, 1972, MITCHELL MILLER purchased a 1968 GMC van-type truck, blue in color, with lettering on the side indicating that it had previously been owned by Pepsico Truck Rental. MITCHELL MILLER purchased this truck from Dixie Truck and Parts Company, 5201 Houston Road, Macon, Georgia, and indicated the purchase was for Trans Aero Corporation, Suite 801, First National Bank Tower, Atlanta, Georgia.

10. On December 17, 1972, JOSEPH KENNETH BROOKS and TERRY LEE SMITH possessed a Pepsico Rental van-type truck bearing a 1972 Florida license 1C/V5032. Contained in this truck was an 8-foot long, shotgun type condenser, metal still cap, 150 five-gallon plastic jugs and 10 one-hundred pound butane gas bottles.

11. On December 19, 1972, MITCHELL MILLER called Walter Puhan in Ballwin, Missouri, and made arrangements to continue the rental of the warehouse property at Kathleen, Georgia, for three to six additional months by the Trans Aero Corporation, P.O. Box 312, Kathleen, Georgia.

COUNT TWO

The Grand Jury further charges that on or about January 9, 1973, in the Macon Division of the Middle District of Georgia and within the jurisdiction of this court, MITCHELL MILLER, JOSEPH KENNETH BROOKS, TERRY LEE SMITH and JOHN HENRY McDUFFIE did unlawfully, wilfully and knowingly have in their possession and custody and under their control a still and distilling apparatus set up without having the same registered as required by law, in violation of Sections 5179(a) and 5601(a)(1) of Title 26, United States Code.

COUNT THREE

That on or about January 9, 1973, in the Macon Division of the Middle District of Georgia and within the jurisdiction of this court, MITCHELL MILLER, JOSEPH KENNETH BROOKS, TERRY LEE SMITH and JOHN HENRY McDUFFIE did unlawfully, wilfully and knowingly carry on the business of distillers of distilled spirits without having given bond as required by law, in violation of Section 5601(a)(4) of Title 26, United States Code.

COUNT FOUR

That on or about January 9, 1973, in the Macon Division of the Middle District of Georgia and within the jurisdiction of this court, MITCHELL MILLER, JOSEPH KENNETH BROOKS, TERRY LEE SMITH and JOHN HENRY McDUFFIE engaged in and carried on the business of distillers of spiritous liquors with intent to defraud the United States of the tax imposed thereon, in violation of Section 5602 of Title 26, United States Code.

COUNT FIVE

That on or about January 9, 1973, in the Macon Division of the Middle District of Georgia and within the jurisdiction of this court, MITCHELL MILLER, JOSEPH KENNETH BROOKS, TERRY LEE SMITH

and JOHN HENRY McDUFFIE did unlawfully, wilfully and knowingly possess certain distilled spirits, to wit: 175 gallons, more or less, without the immediate containers thereof having affixed thereto a stamp as required by law, in violation of Sections 5205(a)(2) and 5604 (a)(1) of Title 26, United States Code.

A TRUE BILL.

_____

Foreman of the Grand Jury

_____

Assistant U.S. Attorney

MAXIMUM PENALTY:

$10,000, 5 years or both on each of Counts 1, 2, 3, 4 and 5.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Criminal No. 9035

Viol.: 18 USC & 371 I/C/W
Internal Revenue Liquor Laws

UNITED STATES OF AMERICA

vs.

MITCHELL MILLER
JOSEPH KENNETH BROOKS
TERRY LEE SMITH
SUSAN McDUFFIE WEEKS
JOHN HENRY McDUFFIE

MOTION TO SUPPRESS EVIDENCE AND STATEMENTS

Comes Now, the Defendant, MITCHELL MILLER, the above captioned case, by and through his attorney, and moves the Court to suppress certain alleged evidence in the above case and respectfully shows the Court the following facts:

1.

The above captioned case is pending in this Court by virtue of an indictment of five counts against the named Defendant, MITCHELL MILLER, alleging conspiracy and substantive violations of the Internal Revenue Laws relating to illicit whisky.

2.

On or about January 23, 1973, agents of the Governments Alcohol, Tobacco & Firearms Unit presented to Mr. Barry Jones, President of Citizens and Southern National Bank, Warner Robins, Georgia, a copy of a pur-

ported grand jury subpoena duces tecum from this Court, a copy of which is attached as Exhibit "A".

3.

On or about the same date, agents of the Governments Alcohol, Tobacco & Firearms Unit presented to Harold Peavey, President of the Bank of Bryon, Bryon, Georgia, a similar grand jury subpoena duces tecum, a copy of which is attached as Exhibit "B".

4.

Both subpoenas required the respective Presidents to produce:

> "all records of accounts, i.e. savings, checking, loan or otherwise, in the name of Mr. Mitch Miller, 3859 Mathis Street, Macon, Ga. and/or Mitch Miller Associates, 100 Executive Terrace, Warner Robins, Ga., from October 1, 1972, through the present date

and that said production should be made on January 24, 1973 at 9:00 o'clock, A.M. to a Federal Grand Jury for this District.

5.

Within several days after service of the attached subpoenas, the banks made available to the Alcohol, Tobacco & Firearms agents certain original documents and microfilm copies of documents pertaining to the defendant, MITCHELL MILLER'S, transactions with the banks including but not limited to confidential financial statements supplied to the banks, personal checks paid by the banks through Defendant's accounts, personal checks deposited to the banks, deposit slips, and other information, the full extent of which is not known at this time to the Defendant.

6.

The Defendant states and believes that certain original and microfilm copies of his personal and business checks may be used as evidence in the above captioned case as well as other information supplied and further that said

information provided Alcohol, Tobacco & Firearms agents with additional investigative leads.

7.

After these documents and copies thereof were supplied to Alcohol, Tobacco & Firearms agents, they were not required to appear for the alleged Grand Jury session on January 24, 1973.

8.

Defendant states and believes that the records of this Court will show that there was in fact no grand jury in session on or about January 24, 1973, but that the next grand jury that did in fact convene was on or about February 12, 1973 for approximately three days.

9.

Defendant further states and believes that the attached exhibits represents an unreasonable, unlawful and illegal abuse of the process of this Court in order to seize alleged evidence of crime and other private documents and memoranda that could not otherwise be seized except through lawful processes of the Courts, through judicial summons or warrants for search and seizure.

10.

Said documents and copies thereof were unlawfully seized by agents of the Government without legal process of this Court, a summons or a search warrant and, therefore, violate the Defendant's constitutional right to privacy and his rights guaranteed under the Fourth Amendment of the Constitution of the United States of America.

11.

The Defendant further states that Exhibits attached hereto are unreasonably broad, vague and nonspecific as to the items sought and for this reason violate the Fourth Amendment of the Constitution of the United States.

12.

The Defendant, MITCHELL MILLER, further states that he has given no consent to the release of any of said documents seized as above described nor for the microfilming by said banks of any of the checks drawn upon his accounts or accounts on which he can draw.

13.

Some of the copies of checks and documents seized by the agents of the Government are required to be kept by certain financial institutions including FDIC banks for reporting purposes to the Secretary of the Treasurer of the United States under act of Congress which has been declared unconstitutional as violative of the citizenry's constitutional rights to privacy and rights guaranteed under the Fourth Amendment of the Constitution of the United States.

14.

The Defendant, MITCHELL MILLER, respectfully moves the Court to suppress all such documentary evidence secured as described above and all other evidence derived from these illegal seizures as violative of his right to privacy and his Fourth Amendment rights or alternatively to exercise the Court's inherent supervisory authority and suppress the evidence seized without lawful process and in the manner set forth above.

WHEREFORE, Defendant, MITCHELL MILLER, prays that any and all of these documents, copies of documents, and other items, memoranda and information derived pursuant to these subpoenas and any other subpoenas issued to any financial institution, unknown to him which he has dealt within the past year be suppressed and that any other evidence derived or brought

forth from the seizure of said documentary evidence be suppressed in any future trial of the above case.

By: _____
D. L. RAMPEY, JR.
Attorney for Defendant,
Mitchell Miller

Nunn, Geiger, Rampey, Buice & Harrington
P.O. Box 520
Warner Robins, Georgia 31093

CERTIFICATE OF SERVICE

This is to certify I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This ——— day of ————————, 19——.

_____
Attorney for

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

No.

UNITED STATES OF AMERICA

v.

GRAND JURY

SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

To Harold Peavy, President, Bank of Byron, Byron, Ga.

You are hereby commanded to appear in the United States District Court for the Middle District of Georgia at U.S. Courtrooms in the city of Macon on the 24th day of January 1973 at 9:00 o'clock A.M. to testify in the case of United States v. Grand Jury and bring with you all records of accounts, *i.e.* savings, checking, loan or otherwise, in the name of Mr. Mitch Miller, 3859 Mathis Street, Macon, Ga. and/or Mitch Miller Associates, 100 Executive Terrace, Warner Robins, Ga., from October 1, 1972, through the present date.

This subpoena is issued upon application of the[1] United States.

Jan. 22, 1973.

RONALD T. KNIGHT
Attorney for United States
P.O. Box U, Macon, Ga.

_____
Clerk.

By _____
Deputy Clerk.

[1] Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at on
and on at
served it on the within named
by delivering a copy to and tendering to
the fee for one day's attendance and the
mileage allowed by law.[2]

Dated:

_____, 19——

Service Fees
Travel ——— $
Services ———
———
total ——— $

_____
By _____

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

No.

UNITED STATES OF AMERICA

v.

GRAND JURY

SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

To Barry Jones, President, C&S National Bank, Warner Robins, Ga.

You are hereby commanded to appear in the United States District Court for the Middle District of Georgia at U.S. Courtrooms in the city of Macon on the 24th day of January 1973 at 9:00 o'clock A.M. to testify in the case of United States v. Grand Jury and bring with you all records of accounts, *i.e.* savings, checking, loan or otherwise, in the name of Mr. Mitch Miller, 3859 Mathis Street, Macon, Ga. and/or Mitch Miller Associates, 100 Executive Terrace, Warner Robins, Ga., from October 1, 1972, through the present date.

This subpoena is issued upon application of the [1] United States.

Jan. 23, 1973.

RONALD T. KNIGHT
Attorney for United States
P.O. Box U, Macon, Ga.

/s/ J. P. Cowart,
Clerk.

By _____
Deputy Clerk.

[1] Insert "United States," or "defendant" as the case may be.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
STATE OF GEORGIA

Criminal No. 9035

Viol.: 18 USC & 371 I/C/W
Internal Revenue Liquor Laws

UNITED STATES OF AMERICA

vs.

MITCHELL MILLER
JOSEPH KENNETH BROOKS
TERRY LEE SMITH
SUSAN MCDUFFIE WEEKS
JOHN HENRY MCDUFFIE

STIPULATION OF FACTS AND TESTIMONY

Comes Now, the United States of America, by and through its attorney, Mr. William J. Schloth, United States Attorney for the Middle District of Georgia or by one of his Assistants and the Defendant, MITCHELL Miller, by and through his attorney and stipulates and agrees that if Mr. Barry Jones, President, C&S Bank of Warner Robins. Georgia were called to testify in behalf of the Defendant, MITCHELL MILLER, on his Motion to Suppress Documentary Evidence secured from the bank by ATF Agents he would testify that:

1.

He is President of C&S Bank of Warner Robins, Georgia.

2.

That on or about January 23, 1973, Alcohol, Tobacco and Firearm Unit Agent served Mr. Barry Jones with a

Grand Jury Subpoena Duces Tecum from this Court, a copy of which is attached as Exhibit "A".

3.

That in compliance with the Subpoena, he ordered his Operations Officer and other employees of the bank to make available original bank records, microfilm records of the accounts of Mr. Mitchell Miller and also to provide said agents with copies of whatever documents they desired.

4.

After the said Barry Jones, President of C&S Bank of Warner Robins, Georgia was served with the Subpoena, he did not advise MITCHELL MILLER that a Subpoena for records relating to his accounts has been served on the bank prior to the records being given over to the ATF Agents.

5.

His Operations Officer a day or two later supplied the agents with copies of checks drawn on Defendant MILLER'S (Mr. Mitchell Miller, 1000 Executive Court, Warner Robins, Georgia 31093, Account No. 100-57-024) account, including microfilm copies of checks, as well as deposit slips, a financial statement and other documents, the extent of which is not known to his personally.

6.

Thereafter, he was advised that it would not be necessary for him to appear at the Grand Jury Session on January 24, 1973.

7.

Since August, 1972, his bank has been keeping microfilm copies of the customers accounts as well as personal checks paid through the customers account in compliance with Treasury and Banking Regulations issued under the Banks Secrecy Act.

The United States of America and Defendant, MITCHELL MILLER, agree and stipulate that this may be

used by the Court in considering the Defendant MILLER'S Motion to Suppress Certain Bank Records as if Mr. Barry Jones had been present and testified in the hearing on said Motion.

Dated this 18th day of April, 1973.

Stipulated and agreed to:

WILLIAM J. SCHLOTH
United States Attorney

By: _____
Assistant U.S. Attorney

/s/ D. L. Rampey, Jr.
D. L. RAMPEY, JR.
Attorney for Defendant
Miller

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

No.

UNITED STATES OF AMERICA

v.

GRAND JURY

SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

To Barry Jones, President, C&S National Bank, Warner Robins, Ga.

You are hereby commanded to appear in the United States District Court for the Middle District of Georgia at U. S. Courtrooms in the city of Macon on the 24th day of January 1973 at 9:00 o'clock A.M. to testify in the case of United States v. GRAND JURY and bring with you all records of accounts, *i.e.* savings, checking, loan or otherwise, in the name of Mr. Mitch Miller, 3859 Mathis Street, Macon, Ga. and/or Mitch Miller Associates, 100 Executive Terrace, Warner Robins, Ga., from October 1, 1972, through the present date.

This subpoena is issued upon application of the[1] United States.

Jan. 23, 1973

Ronald T. Knight
Attorney for United States
P. O. Box U, Macon, Ga.
Address

/s/ J. P. Cowart
Clerk

By _____
Deputy Clerk

[1] Insert "United States," or "defendant" as the case may be.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF GEORGIA
STATE OF GEORGIA

Criminal No. 9035

Viol.: 18 USC & 371 I/C/W
Internal Revenue Liquor Laws

UNITED STATES OF AMERICA

vs.

MITCHELL MILLER
JOSEPH KENNETH BROOKS
TERRY LEE SMITH
SUSAN MCDUFFIE WEEKS
JOHN HENRY MCDUFFIE

STIPULATION OF FACT AND TESTIMONY

Comes Now, the United States of America, by and through its attorney, MR. WILLIAM J. SCHLOTH, United States Attorney for the Middle District of Georgia or by one of his Assistants and the Defendant, MITCHELL MILLER, by and through his attorney and stipulates and agrees that if Mr. Harold Peavy, President, Bank of Byron, Byron, Georgia were called to testify in behalf of the Defendant, MITCHELL MILLER, on his Motion to Suppress Certain Documentary Evidence secured from the bank by ATF Agents he would testify that:

1.

He is the President of the Bank of Byron, of Byron, Georgia.

2.

That on or about January 23, 1973 Alcohol, Tobacco and Firearm Unit Agent served Mr. Harold Peavy with

a Grand Jury Subpoena Duces Tecum from this Court, a copy of which is attached as Exhibit "A".

3.

That in compliance with the Subpoena, he ordered employees of the bank to make available original bank records, microfilm records of the accounts of Mr. Mitchell Miller and also to provide said agents with copies of whatever documents they desired.

4.

After the said Harold Peavey, President of Bank of Byron, Byron, Georgia was served with the Subpoena, he did not advise MITCHELL MILLER that a Subpoena for records relating to his accounts had been served on the bank prior to the records being given over to the ATF Agents.

5.

Employees of his bank, in conjunction with ATF Agents inspected microfilm of checks drawn on the account of Mrs. Minnie Lyn Miller, 3859 Mathis Street, Macon, Georgia 31206, Account No. 100-08-043, on which account MITCHELL MILLER is allowed to drawn checks and supplied ATF Agents with copies of checks drawn by the Defendant, MILLER, as well as deposit slips and other documents, the extent of which is not fully known to him.

6.

Thereafter, he was advised that it would not be necessary for him to appear at the Grand Jury Session on January 24, 1973.

7.

The Bank of Byron keeps microfilm copies of customers accounts including personal checks paid through the accounts in compliance with Treasury and Banking Regulations issued under the Banks Secrecy Act.

The United States of America and Defendant, MITCHELL MILLER, agree and stipulate that this may be used

by the Court in considering the Defendant MILLER'S Motion to Suppress Certain Bank Records as if Mr. Harold Peavey had been present and testified in the hearing on said Motion.

Dated this —— day of ————, 1973.

Stipulated and agreed to:

WILLIAM J. SCHLOTH
United States Attorney

By: _____
Assistant U. S. Attorney

_____
D. L. RAMPEY, JR.
Attorney for Defendant Miller

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

No.

UNITED STATES OF AMERICA

v.

GRAND JURY

SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

To Harold Peavy, President, Bank of Byron, Byron, Ga.

You are hereby commanded to appear in the United States District Court for the Middle District of Georgia at U. S. Courtrooms in the city of Macon on the 24th day of January 1973 at 9:00 o'clock A.M. to testify in the case of United States v. GRAND JURY and bring with you all records of accounts, *i.e.* savings, checking, loan or otherwise, in the name of Mr. Mitch Miller, 3859 Mathis Street, Macon, Ga. and/or Mitch Miller Associates, 100 Executive Terrace, Warner Robins, Ga., from October 1, 1972, through the present date.

This subpoena is issued upon application of the [1] United States.

Jan. 22, 1973

Ronald T. Knight
Attorney for United States
P. O. Box U, Macon, Ga.
Address

_____
Clerk

By _____
Deputy Clerk

[1] Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at _____ on _____ and on _____ at _____ _____ served it on the within named _____ _____ by delivering a copy to _____ and tendering to _____ the fee for one day's attendance and the mileage allowed by law.[2]

Dated:

_____

By _____

_____, 19____

Service Fees
Travel _____$
Services _____

Total _____$_____

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

[Supplemental Transcript]

* * * *

[17] THE COURT: All right. If you can't the Court would have the responsibility of doing that.

All right, that leaves us with the *motion to suppress.* Now, is there any part of those motions to suppress that is not common to the entire case?

MR. LARSEN: I haven't had the opportunity to read the other motions, Your Honor, but I believe there is one [18] motion to suppress as to one matter that I did not file a motion on.

THE COURT: The bank statements would be the one you are referring to?

MR. RAMPEY: I believe so, Your Honor.

THE COURT: But other than the bank statements do we have any other phase of this that seems peculiar to just one defendant?

MR. LARSEN: I believe Mr. Rampey has a motion as to the still. My motion relates only to what was found in Dodge County.

THE COURT: Well, let's look.

MR. MANN: Of course, all of them are common to our interests, I would think.

THE COURT: Well, it being a conspiracy charge it has to be. Now, on the bank records, do you desire to discuss that any further, Mr. Rampey? It's not really necessary to have an evidentiary hearing on that motion is it?

MR. RAMPEY: I think it is, Your Honor.

THE COURT: Isn't that a question of law purely?

MR. RAMPEY: I don't think it is, Your Honor. I followed the Court's suggestion yesterday and Mr. Knight and I have agreed on a stipulation of some testimony in regard to the bank president. I want and desire very much to find out what records were given to the Alcohol, Tobacco and Firearms agent in response to these subpoenas because apparently neither the [19] bank presidents nor these employees kept records of what they turned over. I feel like it's rather important to my client, number one, that we have a record in regard to what

they secured and at what point in the investigation they secure it, because I am raising some constitutional issues that are pending before the Supreme Court of the United States in a case in California in regard to whether or not the requirements, record keeping requirements and also the reporting requirements and other aspects of this particular act violate the defendant's constitutional right to be free from unreasonable searches and seizures.

THE COURT: Well, suppose we throw that over to the foot of the calendar since it is peculiar to your client and proceed with the remainder of the motions.

MR. RAMPEY: Yes sir, all right.

* * * *

[31] MR. ALMAND: The grand jury subpoena is about the only thing left, I think.

MR. RAMPEY: Yes sir. Your Honor, Mr. Knight and I have entered into two *stipulations of fact* in regard to the testimony of the two bank officers, Mr. Jones, president of the C & S at Warner Robins, and also Mr. Peavy of the Bank of Byron. Basically these are the same. We stipulate that these men are the presidents of these respective banks and that on or about January 23, 1973 the Alcohol, Tobacco & Firearms agent served each of them with a subpoena duces tecum to the grand jury, copy of which is attached to these, and I believe—I don't know [32] whether the Government has the originals or not. I don't believe they have been returned to the Clerk's office. I called and I don't believe they are in the Clerk's files but I handed copies, amended copies to my motion—

THE COURT: Well, the witness would have the originals.

MR. RAMPEY: I believe Mr. Powell may have the originals.

THE COURT: May I see your stipulation?

MR. ALMAND: If they don't have the originals we don't contest the copies.

THE COURT: Okay. I have read the stipulation.

MR. RAMPEY: All right. I have two bank employees, one from each bank who assisted the agent in getting these records in response to this subpoena, and I would like to call them for some short testimony, if it please the Court.

THE COURT: All right sir.

MRS. MARGARET BEDSOLE, being called by the Movants, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAMPEY:

Q Would you state your full name, please, and where you are employed.

A Margaret Bedsole, C. & S Bank, Warner Robins.

Q How long have you been employed there?

A Twelve and a half years.

[33] Q Has that bank ever been known by a different name?

A It was formerly the Bank of Warner Robins.

Q Now, I'll ask you if in January of this year you were called upon by your president to assist some Alcohol, Tobacco & Firearms agents in getting some documentary evidence together off of your microfilm and out of your bank records?

A Yes, I was.

Q Do you recall approximately when that was, or specifically when?

A Not without looking at the date. I don't remember exactly what date they came to our bank.

THE COURT: Well, the date is in your stipulation.

MR. RAMPEY: Yes sir.

Q Well, that was in January. Is that correct?

A I'm not sure. It was passed on to me from Mr. Jones, the subpoena.

Q Did you work from that subpoena to get together the records?

A Yes.

Q Do you have the copy of that subpoena that was served?

A Yes.

Q I wonder if you could refresh your recollection from that.

THE COURT: No question about the date, is there? [34] Isn't it immaterial to worry about the date?

Q Well, let me ask you this. Maybe I can get a little quicker to the point I'm leading up to. How long did it take you to get together the documentary evidence to give to—do you know who the agents were that were there?

THE COURT: Do you want her to tell you how long first, or who the agents were?

Q Who were the agents, do you know?

A I don't know both their names, no.

Q Do you see any of them in court?

A One is right there.

MR. RAMPEY: Can the record indicate she is pointing to Mr. Powell?

THE COURT: Yes, sir.

Q How long did you work with them in putting together these records?

A Well, after it was passed on to me we worked probably about four or five hours getting together what they asked for.

Q What did they ask for?

A All financial records of Mitch Miller that we had in the bank from October 1 to January 9.

Q Do you know what you turned over to them, what it consisted of?

A We gave them a copy of the financial statement of Mr. Mitch Miller, the most current one.

[35] Q What date? Do you have any way of identifying that?

A I have a copy of it, yes. It's October '69.

Q What else did you supply to them?

A We gave them a copy of his bank statement, the checks on the statements and the deposit slips, copies of all this information.

Q The checks? Now what do you mean by that?

A The checks that he had written on his account and that had been paid on his account at our bank.

Q How did you go about getting copies of those?

A From our microfilm records that we have stored within the bank.

Q Now when did you start microfilming personal checks that flow through an individual account like this particular account?

A In August of '72 we started microfilming all our records. Prior to that everything was not microfilmed.

Q What about a check that I have in my—I have my account there and I write checks there, are every one of my personal checks on your microfilm now?

A Yes.

Q Prior to August of '72 are my checks back then on microfilm?

A All of them would not be. Some of them would be, depending on how we got them in, from what channel they came to our bank.

[36] Q Do you have any knowledge of why you changed your procedures in August of 1972?

A Because of a new law that we were being required to keep a record of everything on our permanent microfilm file.

Q How do you go about locating these particular checks?

A Well, now every check that is drawn on one of our customers' accounts is microfilmed by account number order and this is since last August that this has been done.

Q What happens to the original checks?

A They are mailed out to the customer.

Q Has that been customary in the banking business? Do you know?

A Yes.

Q Okay. Now are each of these checks from each account on a separate microfilm or how are they digested?

A No. Each day's work is on a separate microfilm roll. It is done by date. Each day's work is microfilmed all at one time on the same roll of film.

Q How did you go about locating the checks for this time period asked for in the subpoena?

A We took a copy of the bank statement, got the dates that we had paid checks on his account, went to those dates, microfilm and then by account number located these items.

Q Did you have to look at other peoples' checks to find the particular check you were looking for?

A Yes. Every customers' work of that day is on the same roll of film.

[37] Q And could you give us some idea of number of customers' checks or individual customers' checks that might be one days work of microfilm?

A No, I could not give an accurate number.

Q Well, how many customers do you have at the C & S Bank?

A We have better than 8,000 checking accounts.

Q Are those personal and business or just all your checking accounts?

A Yes.

Q And all of those are being reduced in the manner that you have described?

A Right.

Q And you supplied to Mr. Powell or another agent all of Mr. Miller's checks for these months in the subpoena?

A Yes, for the time period asked for we gave them to them.

Q What about deposit slips?

A There were copies of the deposit slips on the deposits that had been made to the Mitch Miller account.

Q What about ledger cards and copies of statements and items such as that?

A The copy of the statement was given to them.

Q Now this microfilming of these personal checks is this a microfilm of just the front of the check?

[38] A No, we have front and back, shows all endorsements.

Q Okay. I believe those are all the questions.

MR. ALMAND: We have no questions, Your Honor.

BY THE COURT:

Q I would like to ask, you said that before the change of the law that your records were microfilmed but differently?

A That's right.

Q In what manner were they microfilmed before the law was changed?

A The ones—the checks—well, all items that came into our bank, across our counter, that were handled in our bank that day were microfilmed, but in no order, just in the order they came in to us, and we have cash letters coming from the Federal Reserve Bank that come directly to Macon to be paid on our account at the computer in Macon, and they did not come to our bank to be mocrofilmed before they went to the computer.

Q As a matter of banking practice they were microfilmed somewhere along the way?

A Yes, somewhere along the way.

BY MR. RAMPEY:

Q Well, if they were microfilmed somewhere along the way, did you say they were microfilmed at the computer when they were sent to the C & S in Macon?

[39] A I do not know if Macon microfilmed them before they paid these items or not, but the bank that the items would originate at would be where they had been microfilmed, which could be the Federal Reserve or any place.

Q Before August 1972, if I wrote a check and it was payable to Sears Roebuck up here in Macon, and it came back out there would you have a microfilm copy of that?

A No. This would have been probably deposited in Macon, go directly to the computer here in Macon, and then be forwarded to us the following morning for final payment of the item.

Q All right, thank you.

MR. ALMAND: No questions.

MRS. NONA ELIZABETH JONES, being called by the Movants, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAMPEY:

Q Would you state your name?

A Nona Elizabeth Jones.

Q Where are you employed?

A Bank of Byron.

Q How long have you been there?

A A year, April 10.

Q Were you employed there in January of this year?

A Yes.

[40] Q Did you have occasion during that month to work with some agents of the Treasury Department, Alcohol, Tobacco & Firearms, and look up some checks for them?

A Yes, I did.

Q Do you know who those agents were?

A I don't remember the names.

Q Have you seen any of them today?

A Yes, one.

Q Do you see him now?

A Yes sir.

Q Are you looking at Mr. Powell? Can we let the record state she is identifying Mr. Powell?

THE COURT: Yes sir.

Q All right. Now what were you asked to provide to them?

A The checks on account of Mrs. Minnie Lynn Miller to October—from October through January.

Q And is Mrs. Miller the only person who can sign or draw checks on this account?

A No.

Q Who else can draw checks on that account?

A Mr. Mitch Miller.

Q How did you go about providing them with the checks that they asked for? Were they looking for a particular check?

A Not to my knowledge.

[41] Q How did you go about showing them these checks or copies of them?

A We have a Recordak machine. All of our work is kept on microfilm.

Q And they were not asking for specific checks?

A No sir.

Q How did you go about showing them Mr. Miller's checks, or Mrs. Miller's checks.

A Our work is on microfilm and we have a Recordak film machine that shows a picture of the checks, front and back.

Q Did you operate the machine as they looked at the checks?

A Yes.

Q Did you provide them with any of the checks?

A Two copies.

Q You know which checks you gave over to them?

A I only remember one check.

Q What was that?

A K & B Service Station.

Q But do you recall more than one check being provided?

A Yes sir, it was two checks, I think.

Q Now were any other records of the bank made available pursuant—at the time you worked with them?

A Not to my knowledge. That was all they asked for.

Q What about deposit slips?

[42] A Checks and deposits are all on the same film.

Q I see. Okay. And they picked out particular checks as you worked the machine for them. Is that correct?

A Yes sir.

MR. ALMAND: No questions.

MR. ROBERT L. POWELL, being called by the Movants, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RAMPEY:

Q State your full name please and where you are employed?

A Robert L. Powell, Bureau of Alcohol, Tobacco & Firearms, U.S. Treasury Department.

Q And you were so employed in January of this year?

A That's right.

Q I'll ask you to state whether or not in January you served some subpoenas on the presidents of the C & S Bank of Warner Robins and the Bank of Byron?

A Yes sir.

Q Do you have your copies or the originals of those?

A I have the original copy of the subpoena.

Q Have you made a return on those yet?

A I have filled in the information, yes.

Q Do you know when those were served on the [43] respective officers out there?

A Yes, on the Bank of Byron that subpeona was served on Jan. 22, 1973, and on the C & S Bank of Warner Robins on Jan. 23, 1973.

Q Now, did you receive anything from those banks pursuant to those subpeonas?

A Yes, sir, I did.

Q Now in regard to the C & S Bank of Warner Robins do you have a record of what you received from them?

A Well, I have the checks that I received from them or the paper work that I received from them.

Q Do you have all of that that you received?

A Yes.

Q What about the Bank of Byron?

A I have all that I received from them too, yes.

Q And I believe the Bank of Byron was the lesser number of documents. Is that correct.

A I'm sure of one check and one deposit slip. There may have been one other check; either two or three items. I have those at my office.

Q You do not have them here today?

A I have most everything. The thing I'm not sure about is that third item from the Bank of Byron.

MR. RAMPEY: Just trying to figure some way, Your Honor, to at least get in the record what he actually received.

[44] THE COURT: I don't think you are necessarily entitled to that, sir. You might cover the subject matter but you are not presently entitled to have the evidence laid on the table, as far as I know.

MR. RAMPEY: Well, Your Honor, I don't—if the evidence we are alleging was seized and—

THE COURT: Yes sir, but you are not entitled to see the evidence. This is a hearing on a motion to suppress. It's not a fishing expedition.

MR. RAMPEY: Well, I would like to have the records to show what documents he received. Even if I don't physically see them today I would like to be able to have the record perfected so that if in the future this particular law I'm traveling under is held unconstitutional I'll know what items were received.

THE COURT: Well, if the Government is permitted to use the evidence then upon the trial of the case that will come out and it will all be documented and identified.

MR. RAMPEY: But they may not necessarily use all of the evidence.

THE COURT: So then you have nothing to complain about.

MR. RAMPEY: But they may have used investigative leads from evidence that they received out there that may have been illegally seized.

THE COURT: Well, let's skip over that for the moment. You convince the Court that it ought to be suppressed.

[45] MR. RAMPEY: Can I ask him about the categories of materials that he received?

THE COURT: Yes sir.

Q Can you tell me what you received, without detailing the information?

A At the Bank of Byron we received one deposit slip and one or two checks. At the C & S Bank of Warner Robins we received numerous checks, copies of checks, deposit slips and two financial statements. We

also received from the C & S Bank three monthly statements which list all of the checks for that period.

Q And to your knowledge did you receive copies of all of Mr. Miller's checks for this period specified in the grand jury subpoena?

A Mrs. Bedsole said that there were one or two checks on microfilm that wouldn't print.

Q Wouldn't print?

A Wouldn't print. They couldn't get a good copy of those, so excluding those, as far as I know, we got them all.

Q So far as you know you got full disclosure under your subpoena at the C & S Bank?

A That's correct.

Q For the period specified. Now at the Bank of Byron, did you just look at the microfilm and look at all of the checks or secure all of the documents that you asked for?

A We just looked at the microfilm and made copies of what I have related, deposit slip and one or two checks.

[46] Q All right. Now, in this regard, let me ask you whether or not you used some of those checks to then, in your investigation—to further your investigation?

A Some of those checks have been used in the investigation, yes.

Q As investigative leads?

A Er—yes, probably so.

Q In other words they disclosed possible other transactions or overt acts that you didn't know about at the time you got the checks?

A In one or two instances, yes.

Q All right.

MR. RAMPEY: I don't think I can go any further on that according to the Court's prior ruling.

THE COURT: Well, it seems to the Court as a practical matter that you have covered the water front and that any item that came from one of the banks, if it later comes out in the chain of circumstances is obviously labeled as to the as to the deposit slip with

the name of the bank on it, or the name of the accounts that are in it, already in the evidence, so there is enough identification to protect you down the road it seems to the Court.

MR. RAMPEY: Let me say this. Suppose the ATF agent got a check out there for a transaction at a particular store for the purchase of some item, and he did not otherwise know about this particular transaction, so he goes to the store, based on the information he gets from the check, and interviews [47] the person about some item that may have been found at the still, raw materials or whatever. Well, at the trial of the case they probably will just put the witness on the stand and that will be it, and I wouldn't have any record right now or in the future in that regard. So I agree with the Court that if the checks do go in and they were made available during those times the record might be perfected, but not as to situations such as that.

THE COURT: Well, I will have the Government put every item that they got from the bank in an envelope and make it a part of the case, sealed.

MR. RAMPEY: All right sir.

THE COURT: And in the event your theories ever are supported by the Supreme Court of the United States they will be right there and we can order the envelope opened, if we ever get to that point.

MR. RAMPEY: All right sir. Well, that's true, and—er—

THE COURT: That will fully protect you, but at the same time I don't want to have a fishing expedition.

MR. RAMPEY: All right. For the purpose of the record, of my motion, I'll be satisfied if the Court will order the Government to either make a record or put those documents that were supplied in the record.

THE COURT: All right. The *Government is hereby ordered* forthwith to produce a copy of everything that they [48] got from the bank, turn it over to me, I'll inspect it and put it in a sealed envelope.

MR. ALMAND: May it please the Court, as to this, of course, the Government will be ready and willing to comply. I think we will have trouble making a copy

because I don't think they will be readable. The copies we have are almost illegible as it is.

THE COURT: All right. Just deliver everything you've got.

MR. ALMAND: Yes sir.

THE COURT: And it it's necessary to use it during the trial we will open it and pull it out of the envelope. And note from where it came. I want to protect your client fully.

MR. RAMPEY: Yes sir. That's the point I was trying to make. The checks may go into evidence and may not. They may have resulted in investigative leads.

Q And you received this document, these documents, pursuant to those subpoenas? Is that correct, Mr. Powell?

A Yes sir.

Q Did you have a search warrant or any other authority to get those documents from the bank?

A Just the subpoena.

Q And where did you get the subpoena from?

A From the United States Attorney's office.

Q Do you remember the individual you received it from?

[49] A Well, I received it from Mr. Knight's secretary.

Q And to your knowledge did a grand jury meet on Jan. 24?

A Not to my knowledge.

MR. RAMPEY: I believe that's all the questions I have.

MR. ALMAND: No questions, Your Honor.

THE COURT: Mr. Powell, you are an agent of the United States Government?

A Yes sir.

THE COURT: And of the Treasury Department, I believe. Is that correct?

A Yes sir.

THE COURT: I wanted to get his capacity into the record.

MR. RAMPEY: Yes sir. I wonder if we might be able to put those subpoenas in the record too, the originals or whatever he has.

THE COURT: Oh yes sir, give them to the Clerk. Anything else?

MR. RAMPEY: Like to ask the Court to take judicial notice of the records in this court that there was no grand jury meeting on January 24.

THE COURT: I couldn't tell you whether there was or wasn't, Gentlemen.

MR. RAMPEY: Well, I believe the records of the Court will reflect that—

[50] THE COURT: The record will reflect that there was a grand jury in existence that was empowered to meet at whatever time the Court called it. The record may further reflect that this Court regularly calls that grand jury into session from time to time and that the District Attorney is called upon to prepare for the calling of the grand jury and to prepare matters to be presented to it. That is a complete statement of the practice of this court.

MR. RAMPEY: Right, sir, but in this particular—

THE COURT: Now, whether or not the grand jury met or was to meet on that date, I couldn't tell you.

MR. RAMPEY: I believe the record in the Clerk's office would reflect that and I am asking the Court to take judicial notice of the records.

THE COURT: What do the records reflect, Gentlemen?

MR. ALMAND: I have checked and there was no actual meeting on the 24th.

MR. RAMPEY: They were called into session on February 12 according to information I received from Mrs. Motes. I think that was Tuesday afternoon of the big snow storm and that was the next time they were called into session, that was on February 12.

THE COURT: Well, I know the grand jury was supposed to meet that Monday. I recall that Monday myself, before the snow storm hit us. But you gentlemen can investigate that and [51] supplement it.

MR. RAMPEY: We might be able to stipulate the date when they physically came back in session.

THE COURT: Well, of course, they met at the call of the foreman. Did the foreman call a meeting originally for January 23 that ended up being held in February, or not? I don't know. Mr. Schloth can tell us.

MR. ALMAND: I think, Your Honor, a call was sent out to meet on the 20th. It was not held but the next actual call meeting in which they banded together was on the 12th or 13th. I think the snow storm was on the 12th and they actually met on the 13th, but the call was for the 12th of February.

THE COURT: There was no call on the date shown in this subpoena?

MR. ALMAND: No sir, not for the 24th.

THE COURT: It seems the Government agrees, sir.

MR. RAMPEY: All right sir. That's all.

MR. ALMAND: Nothing further for the Government.

THE COURT: Well, Gentlemen, there's only one thing the Court would observe. Of course, no court can rule on matters in a vacuum and neither side has presented the whole story about bank microfilm because this Judge knows as a matter of personal knowledge that banks for years had microfilmed checks, long before the secrecy act that has been referred to in your motion. In other words the process didn't start with the [52] secrecy act, is what I'm telling you.

MR. RAMPEY: I agree, Your Honor, but by the same testimony of Mrs. Bedsole there is one particular example of a bank that did not microfilm.

THE COURT: She didn't say that.

MR. RAMPEY: Yes sir, I believe she did.

THE COURT: You don't know what the arrangement is at the computer center and if you want to call a witness and perfect your record you might be in better shape.

MR. RAMSEY: But the point that I am making is that at C & S Bank of Warner Robins they did not microfilm each and every individual personal check as it was paid through an account. What she was saying was that as checks just floated in to the computer center at Denmark and Second they were microfilmed there and she could probably testify it would be extremely difficult to utilize that as an investigative tool in the manner in which they have done it here, and my argument—I'm getting ahead of myself.

THE COURT: And I'm saying your record is not complete if you are trying to make that point, if you are trying to go forward on that point.

MR. RAMPEY: On the point—

THE COURT: You haven't established what happened at the computer center. You are just assuming that those records were not microfilmed.

MR. RAMPEY: But she's saying that they microfilm right now for the months—for January and for the months in [53] question they microfilmed at C & S Bank. And by the same token I might add—and I was going to ask the Court to take judicial notice of the statutes in question requiring this microfilming—

THE COURT: Well, if they are statutes I don't have to take judicial notice of them.

MR. RAMPEY: All of which carry with them criminal and civil sanctions, and I don't see really whether it makes much difference that the Bank did do it previously or how they did it. The fact in the banking world is that every bank is required to microfilm the front and back of every personal check in every bank transaction, in every single item that is paid through there.

THE COURT: What I'm pointing out to you is that your contention is that but for that act those records wouldn't have been there and—

MR. RAMPEY: No. I'm talking about but for the act those records would not have been in this bank and in the manner that they were available here under this act.

THE COURT: I would suggest to you if you want to make a complete record that you get somebody from the FDIC, State Banking Department. I think you will discover that as a matter of banking practice banks were required to have microfilm facilities for years and years and years.

MR. RAMPEY: I think certain collection banks were but my point here is that this particular bank—I'm not trying to override totally the fact that some banks did or did not [54] microfilm. This particular bank did not microfilm in the order that—they had to start microfilm-

ing as of August '72. She did testify that the particular checks might have been available or apparently were reduced to microfilm at some phase of the proceeding—

THE COURT: Well, Mr. Rampey, it would appear that this officer had lawful authority to look at the records of this bank, and I invite you to cite any law to the contrary.

MR. RAMPEY: I don't have any at this time.

THE COURT: It appears to me, Gentlemen, that the records were not produced in response to a subpoena. The banker didn't come up and give—bring anything to the grand jury. He just gave them to the agent.

It would just appear for numerous reasons that the motion is not good, in the Court's judgment. If you want to furnish some authority on standing and on the status of bank records I'll be glad to reconsider the motion, but unless you do you may for the moment consider it overruled.

MR. RAMPEY: All rights sir.

* * * *

[Trial Transcript]

[350] MRS. W. S. BEDSOLE, being called by the Government, testified as follows:

DIRECT EXAMINATION

BY MR. KNIGHT:

Q Please state your full name for the record and by whom you are employed.

A Margaret Bedsole, Citizens & Southern Bank of Warner Robins.

Q And what is your title?

A Assistant Operations Officer.

Q In that capacity do you have access to microfilm and records kept by the bank?

A Yes.

Q And pursuant to a subpoena have you previously brought to this court certain records from the bank's microfilm?

A Yes.

Q And do you have with you the actual microfilm pertaining to those photo copies?

A Yes.

Q Would you hold them up so we can see them?

A (Witness complied.)

Q Did you personally supervise the making of the photo-copies from the microfilm that you have in your hand?

A Yes.

Q I hand you Govt. Ex. 45 and ask you if this is one of the photo-copies which you supervised making from the microfilm that you have shown us?

[351] A Yes, it is.

Q And that is a check on the Miller account made out to whom, please?

A It is payable to Macon Iron, Paper & Steel.

Q All right. And I hand you G. 25 and ask you if that is another check which you supervised the making of from the microfilm?

A Yes.

Q And who is that check made payable to?

A James Enco.

Q And also on the Miller account?

A Right.

Q G. 31?

A This is also one of the check, the photo-copy of one made from one of the microfilms of the check.

Q I'm sorry. I handed you the wrong copy. G. 42?

A That is one of them.

Q All right. And that's another check from the Miller account?

A Yes.

Q And to whom is that one payable?

A Specialty Distributing Company.

Q Now, at the time when the bank receives a check on an account such as that, would you tell us what the procedure of the bank is in making the microfilm?

A Every item that comes to our bank is photographed.

[352] Q And what happens to the original document, please mam?

A They are mailed to the customer when the statement is ready.

Q Now, I hand you Govt. Ex. 56 and ask you to identify that, please.

A These are deposits on the Mitch Miller account.

Q Are those also taken from the microfilm which you have displayed to us?

A Yes.

Q Did you supervise the making of those photo-copies?

A Yes.

Q What happened to the original of those deposit slips?

A The original of the deposit slip is in our bank.

Q But are these photo-copies of microfilm made on the same day to day basis as that of the checks?

A Yes.

Q All right. Pursuant to my request, have you gone through the deposits on the Mitch Miller account made during the months of September, October, November, December, 1972 and January of 1973?

A Yes sir.

Q And have you listed the cash deposits to that account during these months.

A I have the cash for October, November and December.

[353] Q All right. And are those indicated in the exhibit G. 56?

A Yes.

Q Would you please tell us what cash deposits were made in October through December, 1972?

A In October none were indicated as cash. November, 17, $1,000 cash; December on 12-1, $1620.00; 12-8, $400.00; 12-19, $450.00; 12-22, $2,000.00; 12-26, $100.00; 12-29, $200.00.

Q Did you calculate the total of the cash deposits during the month of December?

A Yes. It was $4,770.00.

MR. KNIGHT: Your Honor, at this time the Government would like to tender into evidence the documents that she has identified, *G. 56, 42, 25 and 45.*

THE COURT: All right, any objections?

MR. RAMPEY: Your Honor, I would like to look at them first.

THE COURT: Yes sir, you may.

CROSS EXAMINATION

BY MR. RAMPEY:

Q Mrs. Bedsole, you said these are some of the records of Mr. Miller's account that have been furnished to the Government?

A Yes.

Q How much of his account have you furnished to the Government?

[354] A From October 1 through January 9 is when we were asked to furnish it.

Q So you provided copies of all checks written on his account for those dates, copies of deposit slips which I believe you said the originals are at the bank? Is that correct?

A The original of the deposit slips are kept at the bank.

Q And you say you microfilm all items now?

A Yes.

Q Does that include all of your checks drawn on personal or business accounts?

A All checks that are drawn on our bank.

Q This is done pursuant to a federal requirement? The law requires that?

A Right.

Q I don't know, maybe you can read this, but one of these deposit slips doesn't appear to be readable, or I can't read it. What deposit slip is that on, I think it's page 2.

A This was a $500 deposit credited to the Mitch Miller account.

Q What is the date of that deposit?

A November 20.

Q Is that a deposit by check or can you tell from that copy of the slip?

A You can not tell from this copy.

[355] Q That's not one of the deposits that you read off to the District Attorney is it?

A No.

Q All right. On the cash deposits, is that normally set out on the deposit slip?

A Not always.

Q All right. If a customer cashes a check for a certain amount of money and deposits a portion of it as cash in his account and retains a portion of it, how would that show up on a deposit slip?

A It could show as cash if he did not indicate that it was a check less some cash returned.

Q So, say you deposit a $200 check and retain a certain amount in cash, the other was placed in your account, that might show as cash?

A Right.

Q Although in fact it might not be a true cash transaction? Is that correct? I mean cash in the sense of folding money. When you say "cash" in that sense is that a banking term?

A No. We refer to cash as currency, but he could have cashed a check and returned a portion of the cash to the teller for deposit.

Q That might be set up as a cash transaction?

A Right.

Q On the deposit slip.

[356] THE COURT. How, otherwise, would a check that is partially deposited to an account be shown?

A This would reflect on our teller records.

THE COURT: Yes, mam, but in an every day sense, if I take a hundred dollar check I can enter it on there as a hundred dollar check and put "less cash $50" can't I?

A Yes sir.

THE COURT: And the teller hands me $50 in cash and credits $50 to my account?

A Yes sir.

THE COURT: That's another method of doing the same thing?

A Yes sir. It could show as cash, or as a check less cash.

THE COURT: Yes mam.

Q So these deposits would not necessarily, in all instances, reflect a true folding money deposit, would they? I mean under those circumstances that you have detailed.

A There possibly could have been a check cashed previously to the deposit.

Q All right, thank you.

THE COURT: How about those exhibits that were offered in evidence, Gentlemen?

MR. RAMPEY: We don't have any objections to these exhibits, Your Honor, except as to this one that is difficult to read, but I believe she testified that this is not one of the cash deposits she detailed.

[357] THE COURT: All right, sir.

MR. RAMPEY: That's on the second page of the exhibit. As to the legality of it, I don't know whether the Government wants to substitute—

THE COURT: Well, we'll leave that up to them, but there being no objections they are *admitted.* (G. 56, 42, 25, 45)

MRS. NONA JONES, being called by the Government, having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KNIGHT:

Q Would you state your name, please?
A Nona Elizabeth Jones, Byron, Georgia.
Q And where are you employed?
A Bank of Byron.
Q What is your job?
A Bookkeeping.

Q Does your job as bookkeeper also consist of keeping microfilm records of the bank?

A Yes sir.

Q Were you subpoenaed to bring certain of those records with you here today?

A Yes, sir.

Q And have you done so?

A Yes, sir.

Q Is that them right there by you?

[358] A Yes sir.

Q I show you what has been marked Govt. Ex. 31 and ask you what that is?

A This is the copy of the microfilm of the checks at our bank.

Q Did you make this copy personally?

A Yes sir.

Q On whose account is that check drawn?

A Mrs. Minne Lynn Miller.

Q What signature appears on the check?

A Mitch Miller.

Q And who is the check made out to?

A K & B Service Station.

Q What amount?

A $548.84.

Q Did you make this copy from the microfilm yourself, personally?

A Yes sir.

Q Were you subpoenaed to bring certain other records with you here today?

A Yes sir.

A May I see them, please?

A Yes sir.

Q I hand you what has been marked Govt. Ex. 57-A, B and C and ask you if you will tell us first what 57-B is.

A This is a signature card which the girls go by to [359] file the checks to check the signature.

MR. LARSEN: May it please the Court, the proper way of handling this is to identify the documents and tender them into evidence before the contents are gone into.

THE COURT: Yes sir, that's correct.
Q Would you just identify what the document is?
A This is a signature card, power of attorney card.
MR. ALMAND: The Government would tender this at this time.
THE COURT: All right, what are the other exhibits.
Q What is 57-C?
A This is a deposit made to the Bank of Byron.
Q Is that a deposit slip?
A Yes sir.
Q And G. 57-A?
A This is a check on the Bank of Byron, Bank of Milan. Excuse me.
MR. ALMAND: The Government tenders each of these documents.
THE COURT: Any objections?
MR. LARSEN: I might ask a couple of questions.

CROSS EXAMINATION

BY MR. LARSEN:

Q You are not the custodian of the records of the Bank of Milan, are you, young lady?
A No sir, I am not.
[360] Q Is that a copy of a check, rather than a check?
A Right.
Q And that copy is taken from your records or the records of the Bank of Milan?
A This copy is taken from our records.
Q All right, thank you man.
MR. LARSEN: I have no objection, Your Honor.
THE COURT: All right, they are *all admitted?* (57-A, B, C.)

DIRECT EXAMINATION, Cont.

BY MR. ALMAND:

Q Would you explain, then, what 57-A is, please. No, 57-B. I'm sorry.

A Yes sir. This is a signature card which the girls go by to file the checks and to check the signature as the checks come into the bank.
Q Whose signature would appear on that card?
A The signatures that are authorized to sign the checks on that one account.
Q And what is 57-C?
A This is the original deposit slip which the deposit was made and credited to this account.
Q Okay. Now going back to 57-B; who is shown as authorized to sign that card?
A Mitch Miller and Minnie Lynn Miller.
Q Okay. And would you look then at 57—I'm mixed up [361] in my numbers. Look at 57-C, which is the deposit slip, and tell us what is on that?
A This is a deposit slip to the account of Minnie Lynn Miller, the account number, and the check which was deposited was Henry McDuffie and the amount is 15 hundred.
Q And it was a check from Henry McDuffie?
A Yes sir.
Q All right. Would you look at 57-A and tell us what that is?
A This is a check drawn on the Bank of Milan and made payable to M. Miller, and the check is signed by Henry McDuffie, and on the back it is endorsed and the account number, our account number.
Q Who endorsed it?
A M. Miller.
MR. ALMAND: Your Honor, we would also tender *G. 31* at this time.
MR. RAMPEY: No objections.
THE COURT: *Admitted.*

CROSS EXAMINATION

BY MR. RAMPEY:

Q Mrs. Jones, you said you got those particular checks that you have identified from microfilm of the

account of—well, whose account? Let me ask you this first.

A Minnie Lynn Miller.

[362] Q And someone else is allowed to sign, according to the signature card?

A Yes sir.

Q Do you need to look at that to say who that was?

A Yes sir. This is Mitch Miller.

Q Now on this check that you have identified from the Bank of Milan, do you have those records on Mr. Miller's account with you right now?

A Yes sir, I have it on microfilm.

Q Well, do you know whether or not this check was in fact paid by the Bank of Milan?

A No sir. The check was not stamped. It's in our transit work. We work with C & S out of Macon and this is sent up and it takes a week or so before we can say that the check has been paid, and then the bank will send the check back to C & S and they in turn send it back to us if it has not been paid.

Q Well, what I am asking you is do you know whether or not this check was every paid?

A Yes sir.

Q Out of this account?

A Yes sir.

Q Was it ever paid?

A No sir.

Q It was an "insufficient funds" check?

A Insufficient funds, right.

[363] Q So it would never have been credited to Mr. Miller or to Mrs. Miller's account, would it?

A No sir.

Q And these are some of the records I believe you said you made available to the Government, is that correct.

A Yes.

Q Do you recall what other records of this account you made available to the Government?

A The dates that they asked me for were from October to January 9, Oct. 1, 1972 to January 9, 1973.

Q And those were made available under your supervision?

A Yes sir.

Q All of the microfilm?

A Yes sir.

Q Are all of the checks on this account on microfilm at the Bank of Byron?

A For those months, yes sir.

BY MR. LARSEN:

Q Is it Miss or Mrs. Jones?

A Mrs.

Q Mrs. Jones, how do you know that check was never paid by the Bank of Milan?

A The check was sent for collection, but first it was ran through our daily work and the check was sent back to us from the C & S charged to our account, "insufficient funds."

Q And then what did you do with it?

[364] A The check was sent directly to the bank for collection, the Bank of Milan.

Q How do you know that it was never paid by the Bank of Milan? Did you return the check to Mr. Miller or Mrs. Miller?

A Yes sir. The Bank of Milan sent the check back to us after they held it a certain length of time.

Q Well, now, let me ask you this though. How do you know what happened to that check after you returned it to Mr. or Mrs. Miller?

A I do not know what happened after that.

Q And do you know whether the Bank of Milan has since paid that check or not?

A Not to them personally, no sir.

Q Well, to them personally or to any other bank they may have deposited it in or any agent they sent down there to collect it?

A No sir, only to our bank is all.

Q All you know is when you testify under oath that the check had not been paid by the Bank of Milan is that it was not paid to your bank by the Bank of Milan?

A To our bank, right

Q And you do not know what the Bank of Milan may have otherwise done about that check, do you?

A No, sir.

Q Now, where is your record of the check not having been paid?

[365] A This is a copy where we charged it back to the account.

Q This is the record that was entered by your bank?

A Right, this is what we received from the Bank of Milan.

Q Now, do you know what the check was for? Do you have any record of what the check was for?

A The amount?

Q No, what it was given for?

A No sir, I don't.

Q You don't know whether it was for the purchase of furniture or what it might have been for, do you?

A No sir.

Q Thank you, mam.

MR. ALMAND: Your Honor, since counsel went into these, the Government at this time would introduce them into the record as part of its case.

THE COURT: Gentlemen, the Court doesn't see any relevancy of that at all.

MR. ALMAND: Yes sir.

THE COURT: The jury has heard what happened to the check and that ought to be sufficient.

MR. ALMAND: No further questions, Your Honor.

SUPREME COURT OF THE UNITED STATES

No. 74-1179

UNITED STATES, PETITIONER

v.

MITCHELL MILLER

ORDER ALLOWING CERTIORARI. Filed June 9, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

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